IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1629 OF 2004

Sachin Sudhakar Nikam,
age 32 years, residing at
Nikam Chawl, Near Amrapali
Flour Mill, Rambai Colony,
P.L.Lokhande Marg, Chembur,
Mumbai 400 089
(At present detained at Nasik
Road Central Prison, Nasik.) .... Petitioner.

Versus.

1. A.N.Roy,
Commissioner of Police,
Brihan Mumbai.

2. The State of Maharashtra.

3. The Superintendent,
Nashik Road Central Prison,
Nashik. .... Respondents.

Shri S.R.Chitnis, Senior Counsel with Shri
U.N.Tripathi for the Petitioner.

Shri D.S.Mhaispurkar, A.P.P. for the Respondents.

CORAM ; SMT.RANJANA DESAI, &
ABHAY S. OKA, JJ.

Date on which hearing completed. : 2nd November, 2004.

Date on which judgment is pronounced. : 6th December, 2004.

JUDGMENT (Per Abhay S.Oka, J.).

1. By this petition under Article 226 of the Constitution of India, the Petitioner-detenu has taken exception to the order of detention dated 12th July 2004 passed by the Respondent No.1 under section 3(2) of the

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, and Dangerous Persons Act, 1981 (hereinafter referred to as "the said Act of 1981").

2. The impugned order of detention is based on an offence registered vide C.R.No.155 of 2004 with Nehru Nagar Police Station, Mumbai. In the said C.R.No.155 of 2004, the allegation is about commission of an offence punishable under sections 364(A), 386, 323, 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") read with Section 37(1)(a) of the Bombay Police Act, 1951. The order is also based on two in-camera statements of the witnesses A and B.

3. Shri S.R.Chitnis, the learned senior Counsel apeparing on behalf of the Petitioner has raised an interesting question of law based on the judgment of the Apex Court in the case of State of Haryana and others Vs. Bhajan Lal and others, reported in 1992 Supreme Court Cases (Cri.) page 426 (hereinafter referred to as "Bhajan Lal’s case"). He submitted that under section 2(b-1) of the said Act of 1981, a dangerous person is a habitual offender who has repeatedly committed either by himself or as a member or a leader of a gang or has habitually attempted to commit or habitually abetted

commission of any of the offences punishable under Chapter XVI or XVII of the IPC or the offences punishable under Chapter V of the Arms Act, 1959. He submitted that the impugned order of detention is based on two in-camera statements on the basis of which first information report as required by section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") has not been registered and even a competent court has not taken cognizance of any of the offences on the basis of the said two in-camera statements. Placing reliance on the law laid down by the Apex Court in Bhajan Lal's case, he submitted that if any information disclosing commission of a cognizable offence is laid before an officer in-charge of a Police Station satisfying the requirements of section 154(1) of the Code, the said Police Officer has no option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. He submitted that the condition precedent to the commencement of investigation under section 157(1) of the Code is the existence of the reason to suspect the commission of a cognizable offence which has to be, primafacie, disclosed by the allegations made in the first information laid before the Police Officer under section 154(1) of the Code. He submitted that if the allegations made in the two in-camera statements

relied upon by the detaining authority disclosed commission of a cognizable offence, it was the duty of the Police Officer concerned to register a case on the basis of such information. He submitted that the registration of a case as per the requirement of section 154(1) of the said Code is sine-qua-non for the commencement of investigation under section 157 of the Code and as a result of the failure of the concerned officer to register offences on the basis of the in-camera statements, the acts complained of in the said two in-camera statements cannot be termed as offences. He submitted that as the acts complained of in the two in-camera statements cannot be treated as offences, the impugned order of detention is based only on one solitary F.I.R. He, therefore, placing reliance on the various decisions of the Apex Court urged that the Petitioner cannot be termed as a dangerous person and therefore, the order of detention passed by the Respondent No.1 is illegal. He submitted that the requirement of section 2(b-1) of the said Act of 1981, is that a person is a dangerous person provided he is habitually committing offences which are described in the said section. He, therefore, submitted that unless it is shown that the Petitioner has committed more than one offence covered by section 2(b-1), by no stretch of imagination, it can be said that the Petitioner is a

habitual offender and therefore, the Petitioner cannot be termed as a dangerous person.

4. The learned Senior Counsel further submitted that both the in-camera statements are very vague. He urged that in the in-camera statements description of the place of occurrence of the incidents is not narrated. He submitted that even in the order of detention, the area/locality of the place of the incidents described in the in-camera statements have not been mentioned. He submitted that the failure to mention this vital information vitiates the order of detention. he submitted that as information regarding the area/locality was not furnished to the Petitioner, he could not make an effective representation against the order of detention. He submitted that thus the Petitioner has been deprived of his constitutional protection under Article 22(5) of the Constitution of India. Shri Chitnis further submitted that a specific request was made by the detenu's Advocate for furnishing information about the area/locality of the incidents described in the in-camera statements and as the said information was not supplied to the Petitioner, he could not make effective representation and, therefore, the fundamental rights of the Petitioner guaranteed by Article 22(5) of the Constitution have been violated.

5. The learned Senior Counsel further submitted that if the incidents which are narrated in the C.R. registered against the Petitioner as well as in the in-camera statements are examined, it cannot be said that the public order is disturbed as a reason of the said incidents and at the highest it will amount to disturbance of law and order.

6. The learned Senior Counsel has extensively taken us through the decision of the Apex Court in Bhajan Lal's case. He has relied upon other decisions of the Apex Court reported in 1984 Cr.L.J. page 177 (State of Punjab and others v/s. Jagdev Singh Talwandi) (hereinafter referred to as "Jagdev Singh Talwandi's case"); 1974 Supreme Court Cases (Cri.) page 18 (Prabhu Dayal Deorah V/s. The District Magistrate, Kamrup & others) (hereinafter referred to as "Prabhu Dayal's case"); 1995 Supreme Court Cases (Cri.) page 454 (Mustakmiya Jabbarmiya Shaikh v/s. M.M.Mehta, Commissioner of Police and others) (hereinafter referred to as (Mustakmiya's case"); 1999 Supreme Court Cases (Cri.) page 1014 (Amanulla Khan Kudeatalla Khan Pathan v/s. State of Gujrat and others) (hereinafter referred to as "Amanulla khan's case"); and (1989) 3 SCC page 321 (Rashidmiya @ Chhava Ahmedmiya Shaik v/s. Police

Commissioner, Ahemdabad and another) (hereinafter referred to as "Rashidmiya's case").

7. It must be noted here that it is not seriously disputed by the learned Counsel appearing for the Petitioner that the two in-camera statements disclosed commission of offences punishable under the relevant chapters of the IPC mentioned in section 2(b-1) of the said Act of 1981. The learned Senior Counsel has strongly relied upon the statement made by the detaining authority in paragraph No.3 of his affidavit-in-reply dated 28th October 2004. The said statement is as under:

> "It is stated that the incamera statements of witnesses though an offence, however, it is not necessary that the investigation should be carried out pertaining to the incamera statements and further registering the said case."

Relying upon the said statement, the learned senior Counsel submitted that the detaining authority has admitted that it is not necessary to register the case on the basis of the in-camera statements and to investigate the offences. He submitted that thus it is

an admitted position that the Police do not intend to register a case under section 154(1) of the said Code on the basis of the in-camera statements. As stated earlier, the contention of the learned Counsel appearing for the Petitioner is that the Police Officer concerned was under an obligation to register offences as required by section 154(1) of the Code on the basis of in-camera statements and as a result of his failure to do so, the acts complained of in the in-camera statements cannot be termed as offences.

8. Shri Mhaispurkar, the learned A.P.P. appearing for the Respondents has supported the impugned order of detention. He submitted that due to the terror unleashed by the Petitioner, no one is ready to come forward and lodge complaints against the Petitioner with the Police and therefore, in-camera statements have been recorded. He submitted that in-camera statements of witnesses A and B have been considered by the detaining authority as a material and subjective satisfaction has been recorded by the detaining authority after considering the in-camera statements and the F.I.R. that the Petitioner has been habitually committing offences, which are specified in section 2(b-1) of the said Act of 1981. He submitted that the failure to register F.I.R. on the basis of in-camera statements is

irrelevant and the requirement of section 2(b-1) of the said Act of 1981 is satisfied if the in-camera statements disclosed commission of certain offences. He relied upon the affidavits-in-reply of the detaining authority. He has made reference to the decisions of the Apex Court reported in Judgment Today 2000 (8) SC 209 (Smt.Phulwari Pathak v/s. Shri R.H.Mendonca & others) (hereinafter referred to as "Phulwari Pathak's case"); and (1973) 1 SCC page 372 (Pandharinath Shridhar Rangnekar v/s. Dy.Commissioner of Police, the State of Maharashtra) (hereinafter referred to as "Pandharinath's case"). He has also placed reliance on another decision of the Apex Court reported in AIR 1981 S.C. page 2005 (State of Gujarat v/s. Adam Kasam Bhaya) (hereinafter referred to as "Adam's case"). He has also placed reliance on the decision of the Division bench of this Court reported in 2001 Cri.L.J. page 2759 (Smt.Zubunnisa Abdul Majid v/s. M.N.Singh & others) (hereinafter referred to as "Zebunnisa's case"); 1995 Cr.L.J. page 231 (Smt.Kailas Laximan Joshi v/s.B.Akanshi C.P.Thane) (hereinafter referred to as "Kailas Joshi's case"); 1993 Cr.L.J. page 3259 (Anthony @ Sandy John Nigro v/s.Rammurthi, C.P.Mumbai) (hereinafter referred to as "Anthony's case"). He lastly relied upon the judgment of the Full Bench of this Court reported in 2001(3) Mah.L.J. page 580

(Subhangi Tukaram Sawant v/s.R.H.Mendonca & others)

(hereinafter referred to as "Subhangi's case").

9. We have carefully considered the submissions made by the learned Counsel appearing for the parties. Before adverting to the said submissions, it is necessary to refer to the order of detention. The detaining authority has relied upon C.R.No.155 of 2004 registered on 13th May 2004 by Nehru Nagar Police Station, Mumbai. The said C.R. has been registered on the basis of a complaint by one Shri Sunil Kisanlal Shevaliya. The allegation of the complainant is that he is a resident of Thakkar Bapa Colony, Vasant Nagar, Chembur, Mumbai. He is residing at the said place alongwith his mother Smt.Rukminidevi, and his brother Motilal. According to the complainant, he along with his brother are carrying on business of building construction as well as repairs of building. The complainant had undertaken the work of repairs in the house of one Trilokchand at Yeshwant Nagar at Chembur. On 12th May 2004 he had deputed his supervisor and two workers to the house of Shri Trilokchand for removing the cement sheets. In the evening the supervisor of the Complainant Shri Ravi Rathod informed the complainant that the Petitioner's associate Shri Santosh Mane had been to the site and had abused and threatened the said Ravi Rathod and the

workers. The Petitioner's associate Santosh Mane informed Shri Ravi Rathod that the complainant should contact him urgently. On 13th May 2004 at about 8.00 a.m. the Petitioner's supervisor Shri Ravi Rathod and his two workers started repair work in the house. At about 12.45 p.m. the Complainant went to the site. At about 1.00 p.m. the Petitioner and his associates came there. The Petitioner's associate Shri Santosh Mane abused Shri Ravi Rathod and with help of the Petitioner and his other two associates took Shri Ravi Rathod to the left side of "Highway Chinese Restaurant". Therefore, the complainant followed the Petitioner and his associates when he found that the Petitioner and his associates were manhandling the said Shri Ravi Rathod. The Complainant got scared and returned to the work site. After sometime Shri Ravi Rathod also returned to the work site. The Petitioner's associate Santosh Mane followed Shri Ravi Rathod and ordered Shri Ravi Rathod to bring Complainant's brother Motilal . The Petitioner's associate Santosh Mane asked the Complainant about his identity. The Complainant disclosed that his brother Motilal had undertaken the repair work and that he was supervising the repair work. After hearing this, the Petitioner's associate Santosh Mane asked the Complainant to accompany him. The Complainant refused to do so. Hence the Petitioner's

said associate gave a fist blow on the mouth of the Complainant and caught hold of him and started dragging him towards left side of "Highway Chinese Restaurant". At that time the Petitioner's associate Shri Santosh Mane was holding a weapon looking like a knife. The Complainant shouted for help. At that time the Petitioner's associate Santosh Mane threatened the members of public and warned them not to help the Petitioner. As a result of the scare the Complainant's workers run away. People gathered got scared and the shopkeepers pulled down their shutters. The Petitioner and his associates abused the complainant. The said Santosh Mane told the Petitioner and his associates to assault the Complainant as he was not paying hafta The Petitioner and his associates started giving fist blows to the Complainant. At that time the Complainant's brother Motilal rushed there. When the Petitioner and his associates saw Motilal, they asked Motilal why the repair work was started without their permission. The Petitioner and his associate demanded a sum of Rs.25,000/- and threatened that if the said amount was not paid, limbs of the Complainant would be chopped. When Motilal declined to pay the amount, the Petitioner and his associates got enraged and assaulted Motilal by fist blows. Hence Motilal handed over a cash of Rs.5000/- to the Petitioner's associate Shri Santosh

Mane. At that time one Shri Sundar Chopra who was present tried to intervene and therefore, the Petitioner and his associates threatened him to leave the place. The Petitioner's associate Shri Santosh Mane threatened the said Motilal in presence of Sunder Chopra to pay the remaining amount of Rs.20,000/-by next day failing which Motilal will be assaulted. The detaining authority noted that in connection with the said C.R. the Petitioner was arrested and remanded to the judicial custody. The detaining authority also recorded subjective satisfaction that the Petitioner may be granted bail in accordance with the normal law of land in due course and that considering the tendencies and inclinations of the Petitioner, in the event of the Petitioner becoming a free person and remaining at large, he was likely to revert to similar prejudicial activities.

10. The detaining authority has relied upon in-camera statement of witness A which is recorded on 9th June 2004. Witness A has described the Petitioner and his Associate Santosh Mane as goondas who are moving with weapons like chopper, knife etc. Witness A stated that they have created a reign of terror and by virtue of the terror created they are extorting hafta from building contractors, shopkeepers, small scale industrialists in

the localities of Yeshwant Nagar, Shell Colony, Jai Ambe Nagar and adjoining areas. The witness stated that in the last week of April 2004 the Petitioner and his associates came at his place of business. Shri Santosh Mane demanded a sum of Rs.10,000/- from the witness. When the witness stated that he was not possessing the amount, the said Santosh Mane took out a knife from the pocket of his trouser and placed it on the stomach of the witness. The Petitioner caught hold of his hand. His associates threatened the workers of the witness by knife. The Petitioner took out a sum of Rs.5000/- from the pocket of the associate of the witness and gave a kick to the witness as a result of which he fell down. He stated that after seeing the incident, the persons passing through the lane ran helter skelter and the residents of the locality closed the doors of their houses. He stated that while leaving the said Santosh Mane threatened the Petitioner that if he reported the matter to the Police, he and his family members will be killed. The witness stated that due to the scare created by the said Santosh Mane, he did not report the matter to the police.

11. Witness B in his in-camera statement made similar allegations against the Petitioner and his associates regarding the terror created by them in certain

localities. He stated that in the first week of May 2004 at about 8.30 p.m., Santosh Mane and the Petitioner and his associates came at the place of his business and demanded a sum of Rs.5000/- and threatened to kill the witness if the said amount was not paid. When the witness declined to pay the amount on the ground that his business was suffering from recession, the Petitioner took out a chopper and banged the same on the table in front of the witness. Santosh Mane forcibly took cash collection of Rs.2300/- which was kept in the drawer of the table. When the witness tried to resist, the said Santosh Mane delivered kick blows on the chest of the witness as a result of which he fell down. He stated that his customers ran away. The Petitioner while leaving threatened the witness that he will have to pay a sum of Rs.2000/- per month if he was desirous of running the business. He also threatened the witness that if he attempts to narrate the incident to anybody he would be killed. Due to the scare the witness did not report the matter to the Police Station.

12. Before going to the ratio of the decision of Apex court in Bhajan Lal's case, it is necessary to refer to relevant statutory provisions. Section 2(b-1) of the said Act of 1981 reads thus:

> "2(b-1). "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959."

The said Act of 1981 does not define the term "offence". Section 2(b-1) refers to the offence punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act. Section 2(40) of the IPC defines the word "offence" as under:

> "40. "Offence - Except in the Chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.
>
> . In Chapters IV (Chapter VA) and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word

> "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.
>
> . And in sections 41, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether without or without fine."

The Code of Criminal Procedure also defines the word "offence" in section 2(n) which reads as under:

> "2(n). "Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1871)."

The Bombay General Clauses Act, 1904 defines "offence" in section 2(33) as:

> "2(33). "offence" shall mean any act or omission made punishable by any law for the

time being in force."

13. Thus, broadly speaking, an offence is a thing which is punishable by any law. An offence is an act or omission which is made punishable by law. On a plain reading of the definition of "offence" under various enactments referred to above, it can be said that an offence is said to have been committed when there is an act or omission on the part of a person which is made punishable by law. Thus an offence is complete when an act punishable by any law is committed by a person. An offence is committed when there is an omission on the part of any person which is made punishable by any law.

14. The learned Senior Counsel appearing for the Petitioner has heavily relied upon the Judgment of the Apex Court in Bhajan Lal's case. He has extensively taken us to the various paragraphs of the Judgment of the Apex Court. Some of the relevant paragraphs which are relied upon by the learned Counsel are as under:

"30. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" (as defined under section 2(c) of the Code) if given orally (in which case it is to be

reduced into writing) or in writing to"an officer incharge of a police station" (within the meaning of Section 2(o) of the code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "First Information Report" and which act of entering the information in the said form is known as registration of a crime of a case"

31. At the state of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered

under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of section 154 of the Code.

33. It is, therefore, manifestly clear that

if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

40. The core of the above sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions

relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

49. Resultantly, the condition precedent to the commencement of the investigation under Section 157(1) of the Code is the existence of the reason to suspect the commission of a cognizable offence which has to be, prima facie, disclosed by the allegations made in the first information laid before the police officer under section 154(1)."

It is necessary to see as to what was the controversy involved in the matter before the Apex Court. A complaint was filed by one Dharampal on 12th November 1987 before Shri Devilal who was then the Chief Minister of Haryana against Shri Bhajan Lal. The complaint was regarding accumulation of large wealth by Shri Bhajan

Lal and it was prayed in the complaint that action be initiated against Shri Bhajan Lal. The said complaint was marked by the office of the Chief Minister to the Director General of Police (DGP) who in turn made endorsement by forwarding the complaint to the Superintendent of Police, Hissar, stating therein that after looking into the complaint necessary action should be taken. The Superintendent of Police made an endorsement on the complaint "please register a case and investigate". Accordingly Station House Officer registered a case against Shri Bhajan Lal on the basis of the allegations in the complaint. A case was registered under section 161 and 165 of the IPC and section 5(2) of the Prevention of Corruption Act. The Officer forwarded a copy of the First Information Report to the learned Judicial Magistrate and took up the investigation. Shri Bhajan Lal filed a petition in the High Court praying for quashing of the First Information Report and also for issuance of a writ of prohibition restraining the Police from proceeding with the investigation. The High Court quashed the FIR by holding that the allegations in the complainant do not constitute commission of cognizable offence for commencing lawful investigation. Being aggrieved by the judgment and order of the High Court, the State of Haryana and others approached the Apex Court. While

dealing with the submissions before the Apex Court, a reference was made to the provisions of the said Code and in particular to the provisions contained in section 154 to 159 of the said Code. In paragraph 61 of the Judgment the Apex Court noted thus:

> "61. Heretofore, we have dealt with the intendment of the various statutory provisions relating to the registration of the first information report, the statutory duty cast on the police officers to investigate the cognizable offence, such authority of the police officers in the field of investigation and the circumscribed limits imposed on such authority in the conduct of investigation."

After saying this in paragraph 61, the Apex Court noted the issue which came up for scrutiny in the case before it. Paragraph 62 reads thus:

> "62. The central issue involved for scrutiny is whether the order of the court in quashing the first information report and the proceeding of the investigation is legally sustainable and if not, to what extent the said order suffers from legal infirmity."

A perusal of the Judgment of the Apex Court shows that the issue regarding the interpretation of the word "offence" did not come up for consideration of the Apex Court. The Apex Court examined the scheme of the Code especially in relation to sections 154 to 159 and came to the conclusion that if any information disclosing a cognizable offence is laid before an Officer in-charge of a Police Station, the said Police Officer has no other option except to register a case on the basis of such information. In paragraph 35 of the Judgment, the Apex Court referred to the other question which arose for consideration, namely "whether the registration of a criminal case under section 154(1) of the Code ipso facto warrants setting in motion of an investigation under Chapter XII of the Code". In paragraph 40 the Apex Court answered the said question by holding that if a Police Officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognisable offence is exclusively within the domain of the investigating agencies over which the courts cannot

have control. The Apex Court held that the Courts have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions of law relating to investigation. The Apex Court further held that it is only in a case wherein the Police Officer decides not to investigate an offence, the concerned Magistrate can intervene and direct an investigation. It must be noted here that what the Apex Court has held is that it is mandatory for the Police Officer to register a case under section 154(1) if information regarding commission of a cognizable offence is laid before him. The question which we have to examine is if in a given case even after the information is laid before a Police officer regarding commission of a cognizable offence, he fails to register a case as required by section 154(1) of the said Code, whether it can be said that the act or omission complained of is not an offence. In other words can it be said that unless a case is registered regarding commission of a cognizable offence, the act or omission complained of cannot be termed as an offence. In our opinion, the decision of the Apex Court in Bhajan Lal's case is not an authority for the proposition that if information regarding commission of a cognizable offence is laid before a Police Officer and if the Police Officer fails to register F.I.R., the act or

omission complained of cannot be termed as an offence.

15. We have already referred to the definition of the word "offence" under various statutes. From the said definitions, it is clear that an offence is constituted by an act or omission which is made punishable under the law. Once such act or omission takes place, an offence is committed. For example, if an act of robbery is committed, the said act being punishable under the IPC becomes an offence. Registration of a case on the basis of the information or allegation regarding commission of an offence is not a sine-qua-non for constituting an offence. As we have stated earlier, an offence is complete the moment the act or omission which is punishable under the law takes place. Whether a case is registered for commission of the offence or not, whether investigation is made into the offence or not and whether the guilty person is punished for the offence or not may have no relevance at all in so far as definition of offence is concerned. Distinction has to be made between commission of offence and registration of F.I.R.. There is material distinction between the two. The offence forms part of the substantive law and registration of F.I.R., investigation, the prosecution forms part of procedural law. We are, therefore, unable to accept the submission of learned Senior Counsel Shri

Chitnis.

16. At this stage it will be necessary to refer to certain decisions of the Apex Court as well as this Court. In the case of Debu Ghose and others Vs. the State of West Bengal reported in AIR 1972 S.C. page 530, the Apex Court was considering a challenge to the order passed under the provisions of the West Bengal (Prevention of Violent Activities) Act, 1970 (hereinafter referred to as "the said Act of 1970"). Section 3(1) of the said Act of 1970 empowers the State Government to detain a person if it was satisfied that detention of such person was necessary with a view to prevent him from acting in any manner prejudicial to the security of the State or the maintenance of public order.Sub-section (2) of section 3 of the said Act of 1970 defines various acts constituting "an act prejudicial to the maintenance of the public order".

Clause (d) of sub-section (2) of section 3 read thus:

> "(d) committing, or instigating any person to commit any offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more or any offence under the Arms Act, 1959 (54 of 1959) or the Explosive Substances Act, 1908 (6 of

1908) where the commission of such offence disturbs, or is likely to disturb public order."

One of the contentions before the Apex Court was that after the authorities were satisfied that offences of violence have been committed by the detenues, they could have been properly prosecuted in a Court of law and since no prosecution was not launched against them, the detention was malafide. In paragraph 11 the Apex Court has dealt with the argument. The Apex Court held that :

"There is no substance in this argument. In the first place, we do not know whether the authorities could have obtained sufficient evidence against the petitioners for successfully prosecuting them in the ordinary course. There are decided cases in which the detention order has been upheld even after a prosecution was launched but was withdrawn before the detention was made. It has been held that a mere decision to drop a prosecution before passing an order of detention cannot be regarded as malafide.

See: Sahib Singh Dugal v. Union of India.)"

17. In the case of Debu Ghose, the Apex Court has referred to its earlier Judgment reported in AIR 1966 S.C. page 340 (Sahib Singh Dugal v/s. Union of India). In the case of Sahib Singh, the Apex Court was dealing with the challenge to an order of detention passed under the Defence of India Rules, 1962. The Petitioner before the Apex Court was initially arrested and put in Jail as an undertrial prisoner for commission of an offence under section 3 of the Official Secrets Act. After the arrest of the Petitioner, the Police Officer in-charge of the investigation made a report to the Court to the effect that all the persons involved in the case may be discharged as sufficient evidence for their conviction could not be discovered during the investigation. Consequently the learned Magistrate discharged all the accused including the Petitioner. When the Petitioner came out of the jail, he was immediately served with an order of detention under Rule 30(1)(b) of the Defence of India Rules. The order which was passed by the Government of India provided that the Petitioner be detained in order to prevent him from acting in a manner prejudicial to the defence of India, public safety, and Indian relations with the foreign powers. One of the challenges before the Apex Court was that the order of detention was malafide. The allegation of malafide was based on the fact that the Petitioner was detained under

the law of preventive detention after the authorities found that there was no sufficient evidence to prosecute the Petitioner for an offence committed under section 3 of the Official Secrets Act. It was contended that the very fact that the prosecution was dropped against the Petitioner and thereafter an order of detention was passed on similar allegations which were contained in the prosecution was sufficient to come to the conclusion that the order of detention was malafide. The Apex court dealt with the said contention in paragraph 7 by holding that:

> "This by itself is not sufficient to lead to the inference that the action of the detaining authority was mala fide. It may very well be that the executive authorities felt that it was not possible to obtain a conviction for a particular offence under the Official Secrets Act; at the same time they might reasonably come to the conclusion that the activities of the petitioners which had been watched for over two years before the order of detention was passed were of such a nature as to justify the order of detention. We cannot infer merely from the fact that the authorities decided to drop the case under

> the Official Secrets Act and thereafter to order the detention of the petitions under the Rules that the order of detention was mala fide. As we have already said, it may not be possible to obtain a conviction for a particular offence; but the authorities may still be justified in ordering detention of a person in view of his past activities which will be of a wider range than the mere proof of a particular offence in a Court of law. We are not therefore prepared to hold that the order of detention in these cases were mala fide."

18. Reference will have to be made to the decision of the Apex Court reported in 1992 Cr.L.J. page 769 (Harpreet Kaur Haryinder Singh v/s. State of Maharashtra). In paragraph 18 of the Judgment the Apex Court held:

> "18. There is no gainsaying that in the present state of law, a criminal can be punished only when the prosecution is able to lead evidence and prove the case against an accused person beyond a reasonable doubt. Where the prosecution is unable to lead

evidence to prove its case, the case fails, though that failure does not imply that no crime had been committed. Where the prosecution case fails, because witnesses are reluctant on account of fear of retaliation to come forward to depose against an accused, obviously, the crime would go unpunished and the criminal would be encouraged. In the ultimate analysis it is the society which suffers. Respect for law has to be maintained in the interest of the society and discouragement of a criminal is one of the ways to maintain it. The objectionable activities of a detenu have, therefore, to be judged in the totality of the circumstances to find out whether those activities have any prejudicial effect on the society as a whole or not. If the society, and not only an individual, suffers on account of the questionable activities of a person, then those activities are prejudicial to the maintenance of 'public order' and are not merely prejudicial to the maintenance of 'law and order'."

The said observation of the Apex Court in the case of

Harpreet Kaur was taken note of by the Division Bench of this Court in Kailas Joshi's case. In paragraph 33 of Kailas Joshi's Judgment, this Court observed:

> "33. From the observation as contained in said para it will be noticed that the Apex Court has taken due note of the situation and emphasized that when there prevails atmosphere of terror and fear and the witnesses who may be victims due to the prejudicial activities of an individual are reluctant to come forth, in the interest of society such course will be necessary as done in the instant case."

After considering the law laid down by the Apex Court in the case of Harpreet Kaur, the Division Bench of this Court in Kailas Joshi's case came to the conclusion that the detaining authority while passing the order of detention under the National Security Act 1980 was entitled to and was justified in relying upon the material in the form of in-camera statement of the witnesses. The Division Bench directed that such in-camera statements relied upon by the detaining authority should be subjected to verification by the Senior Police Officer in the rank of atleast Assistant Commissioner of Police.

19. Reference will have to be made to the decision of the Apex Court in the case reported in (1981) 4 S.C.C. page 647 (Smt.Hemlata Kantilal Shah v/s. State of Maharashtra & ors.). In the said case the challenge before the Apex court was to an order of detention passed under section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. One of the contentions raised before the Apex Court was that the proper course open for the Government was to prosecute and convict the detenu for the offence, if any, for violation of the provisions of law. While dealing with the said submission, the Apex Court held in paragraph 21 as under:

> "21. The rule laid down is that a prosecution or the absence of it is not an absolute bar to an order of preventive detention; the authority may prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat such offences. What is required

> is that the detaining authority is to satisfy the Court that it had in mind the question whether prosecution of the offender was possible and sufficient in the circumstances of the case. In some cases of prosecution it may not be possible to bring the culprit to book as in case of a professional bully, a murderer or a dacoit, witnesses do not come forward to depose against him out of fear, or in case of international smuggling, it may not be possible to collect all necessary evidence without unreasonable delay and expenditure to prove the guilt of the offender beyond reasonable doubt."

Thus the Apex Court held that absence of prosecution of detenu is not an absolute bar to an order of preventive detention. The Apex Court noted that in many cases it may not be possible to bring culprit to book as witnesses do not come forward to depose against certain accused out of fear. Therefore, the ratio of the said decision is that the failure to prosecute detenue under the ordinary law of land for commission of offence is not fatal to the order of detention. A prosecution or absence of it is not an absolute bar to an order of preventive detention.

20. The Full Bench of this Court in Subhangi's case was dealing with section 2(b-1) of the said Act of 1981. The question before the Full Bench was whether it was necessary that there should be two prior convictions before a person could be detained as a dangerous person as per section 2(b-1) of the said Act of 1981. While dealing with the said issue, the Full Bench in paragraph 32 held that:

> "32. On the contrary, the aforesaid two Division Bench judgments in S.K.Shamsher vs. State of Maharashtra (supra) and S.S.Chavan vs.State of Maharashtra and ors.(supra) of Nagpur Bench proceed on an erroneous assumption that in Mustakmiya Jubbarmiya Shaikh (supra) the Supreme court has held that there must be two prior convictions, before passing an order of preventive detention. Even otherwise, the reasoning that unless and until there is a conviction, no habit can be inferred and that the same can be inferred only after two judicial decisions resulting in convictions, cannot be sustained in law. If the above reasoning is accepted, it will lead to a preposterous situation, since two prior convictions will take a number of years and

till then the person concerned can continue to indulge in such crimes with impunity. The proximity aspect before passing a detention order will also be lost. **The reasoning that a person is said to have committed an offence only after a conviction, is totally irrational and the same cannot be sustained. The above reasoning would render the preventive detention law totally nugatory and meaningless. We find the above reasoning totally meaningless and patently contrary to various Supreme Court decisions cited hereinabove. As observed by the Supreme Court in various decisions, the authorities may not be able to secure convictions at all, but that does not mean no preventive detention order could be passed.**" (emphasis supplied).

21. The condition precedent for passing an order of detention against a dangerous person under the said Act of 1981 is that the detaining authority must record a subjective satisfaction that the detenue either by himself or as a member or a leader of a gang has been habitually committing or is attempting to commit any of offences punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act, 1959. We have

already held in the earlier part of the judgment that the commission of offence is complete the moment act or omission punishable under the law takes place. The failure to register a FIR or a case under section 154(1) of the Code does not have the effect of the act or the omission ceasing to be an offence. The Full Bench of this Court has negatived the argument that a person is said to have committed offence only after the conviction. If the said argument is negatived by the Full Bench, by same anology, the argument that a person is said to have committed an offence only after F.I.R. is registered will have to be rejected. Therefore, we are not in a position to accept the submission of the learned Senior Counsel for the Petitioner that unless FIR is registered on the basis of the in-camera statements, the acts or omissions mentioned in the in-camera statements cannot be treated as an offence and therefore, such acts or omissions cannot be relied upon for recording a subjective satisfaction that the detenue is habitually committing offences. The submission that a person can be said to have committed an offence only after a F.I.R. is registered cannot be accepted.

22. In Sahib Singh's case (supra) the Apex Court has upheld the order of detention which was passed on the basis of an alleged commission of offence by the detenue

under section 3 of the Official Secrets Act after the learned Magistrate discharged the detenu on the basis of the report submitted by the Investigating Officer that there was no sufficient evidence which could be discovered against the detenu for conviction under section 3 of the said Act. In many cases due to the terror unleashed by the detenu it is impossible to obtain sufficient evidence against the detenu for successfully prosecuting the detenu in ordinary course. In such a situation, the failure to prosecute the detenue under the ordinary law of the land or even discharge of the detenu in prosecution does not affect the power of the detaining authority to pass an order of preventive detention. The Apex Court in the case of Harpreet Kaur (supra) noted that where a prosecution case fails because witnesses are reluctant on account of fear of retaliation to come forward to depose against the accused, the crime would go unpunished and in the ultimate analysis it is the society which suffers. In such as case the need of passing an order of preventive detention may arise. On this aspect it will be also be necessary to refer to the judgment of the Apex Court in a case reported in AIR 1981 S.C. 2005 (State of Gujarat v/s. Adam Bhaya). The Supreme Court held that the rule of criminal jurisprudence that the guilt of the accused must be established beyond reasonable doubt cannot be

imported into the law of preventive detention. We cannot ignore that the law of preventive detention operates in an altogether different field and the power of the detaining authority cannot be affected by the failure of the authorities to prosecute the detenu under the regular law where failure is due to reluctance of the witnesses to come forward as a result of terror created by the detenu.

23. Reliance was placed on the affidavit of the detaining authority which according to the Petitioner records that the police have declined to register offence on the basis of the in-camera statements and have refused to carry out investigation. A reference will have to be made to the order of detention and the affidavit-in-reply dated 6th October 2004 of the detaining authority. In paragraph 9(a) of the order, it is stated that though the detenu and his associates committed several offences, the witnesses were not willing to come forward to make any complaint openly against the detenu due to the reign of terror which was created by the detenu. Only after the witnesses were given assurance that their names and identifying particulars would not be disclosed, witnesses A and B came forward to give their statements. A perusal of the affidavit shows that this is one of the cases in which

according to the detaining authority due to the terror unleashed by the detenue and his associates, the witness will not come forward to depose against the Petitioner. In view of what we have held above, the failure to register a F.I.R. on the basis of the in-camera statements cannot prevent the detaining authority from placing reliance on the said in-camera statements which disclose commission of offences by the detenu.

24. As the in-camera statements can be considered as a material for recording a subjection satisfaction regarding the commission of offences, reliance placed by the Petitioner on the decision in Rashidmiya's case will not help the Petitioner. In paragraph No.14 of the said decision the Apex Court held,

> "...But what the section requires is that to bring a person within the definition, it must be shown that he is habitually committing or attempting to commit or abetting the commission of offences enumerated therein. In the instant case, the registration of only one case is mentioned under the provisions of Section 307 of IPC and Section 25 of the Arms Act falling within the said definition clause.

> Therefore, this solitary incident would hardly be sufficient to conclude that the detenu was habitually committing or attempting to commit or abetting the commission of offences..."

In the present case the material on record shows that the Petitioner has allegedly committed the offences on more two occasions.

25. This takes us to the next submission advanced by the learned Senior Counsel appearing for the Petitioner. The second submission is that the order of detention is very vague and it does not mention the locality/area in which the Petitioner is allegedly carrying on prejudicial activities. In support of the said contention the learned Counsel for the Petitioner has relied upon the decision of the Apex Court in the case of Prabhu Dayal (supra). The Apex Court held that if one of the grounds communicated to the detenu is found to be vague the detention order must be pronounced to be bad. The learned Counsel appearing for the Petitioner has relied upon the observation made by the Apex Court in paragraph 16 of the said Judgment which reads thus:

> "....The detenue has a right under Article

22(5) of the Constitution to be afforded the earliest opportunity of making a representation against the order of detention. That constitutional right includes within its compass the right to be furnished with adequate particulars of the grounds of the detention order...."

We have carefully examined the order of detention. In paragraph 5(b)(i) the detaining authority has stated that the detenu and his associates have created a reign of terror in the localities of Yeshwant Nagar, Shell Colony, Jai Ambe Nagar and adjoining areas. In paragraph 5(b)(ii), it is stated that the detenu and his associates have unleashed reign of terror in the localities of Shramjivi Nagar, Tembhe Nagar, Shell Colony, Thakkar Bappa Colony, Yeshwant Nagar and areas adjoining thereto. It is, therefore, apparent that the detention order has set out the localities in which the Petitioner is carrying out his prejudicial activities. In paragraph 6 of the order, the detaining authority has again referred to various localities such as Yeshwant Nagar, Shramjivi Nagar, Takkar Bappa Colony, Shell Colony, Jai Ambe Nagar, Tembhe Nagar, Chembur, and areas adjoining thereto within the jurisdiction of Nehru Nagar Police Station and Tilak Nagar Police Station in Mumbai. On a plain reading of the order of detention, it is very

clear to us that the detaining authority has referred to places/localities in which prejudicial activities are being carried on by the petitioner. We are therefore unable to accept the submission that the order of detention is vague in that respect.

26. Shri Chitnis, learned Senior Counsel for the Petitioner, by inviting our attention to the in-camera statements of witnesses A and B, submitted that in both the in-camera statements the places of incident relating to the witnesses A and B are not mentioned. He submitted that witness A has vaguely stated that incident had taken place in the last week of April and witness B has vaguely stated that the incident had taken in May 2004. He submitted that if correct dates were mentioned in the statements, the Petitioner could have made a proper representation.

27. Both the in-camera statements in its first paragraph have set out the areas in which the Petitioner and his associates are carrying out their prejudicial activities. In the second paragraph of both the statements the witnesses have stated that the incidents have taken place at their respective places of business. In the first paragraph of both the said statements, it is stated that the witness are residing at the addresses

mentioned and they are carrying on respective business at their respective places of residence. In the last paragraph of both the statements, both the witnesses have stated that they have given their statements as the Police have assured them that their names and addresses will be kept secret. The question is whether failure to state in the order of detention the place of incidents referred to in-camera statements has defeated the constitutional right of the Petitioner to make an effective representation. This Court and the Apex Court have already held that in-camera statements can be relied upon as a material for passing an order of detention. The very object of recording in-camera statements is to keep the identity and address of the witnesses confidential or secret as the witnesses are scared of the filing complaints or of giving evidence against the criminal due to the terror unleashed by him. The witnesses came forward to give statement only because the assurances was given by the Police that their names and addresses will be kept secret. Therefore, addresses of the witnesses whose in-camera statements are recorded cannot be disclosed. In the second paragraph of both the in-camera statements it is stated that the witnesses are residing in the area in which the Petitioner and his associates are regularly coming for collecting the hafta. The said areas and

localities are disclosed in the in-camera statements and in the order of detention. The in-camera statements refer to a prticular week of a particular month when alleged offences are committed. In our opinion reference to a particular day or date is not necessary. We are, therefore, unable to accede to the submission of the learned Counsel for the Petitioner that due to the non-disclosure of place of incidents in the in-camera statements, the Petitioner's right to make effective representation has been defeated.

28. The learned Senior Counsel appearing for the Petitioner has relied upon the decision of the Supreme Court in the case of Jagdev Singh Talwandi (supra). Relying upon the said judgment, he submitted that the details of the prejudicial activities such as time, place, and date must be given in the grounds of detention. The Apex Court in the said case was dealing with the order of detention passed under the National Security Act. In the present case we are dealing with the order of detention passed against a dangerous person under the provisions of the Act of 1981. The Apex Court in the decision given in the case of Smt.Phulwari Pathak (supra) has held that the in-camera statement can be relied upon by the detaining authority for passing an order of detention under the said Act of 1981 on the

ground that the detenu is a dangerous person under section 2(b-1). It will be necessary to refer to paragraph 16 of the said Judgment which reads as under:

> "16. Then comes the crucial question whether 'in-camera' statements of persons/ witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under section 3 of the Act. Preventive detention measure is harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the

person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted."

Before the Apex Court a specific submission was made that the statements of the persons/witnesses were recorded in-camera cannot form the basis of the order of detention and the said contention has been negatived. Therefore, the details which are required to be kept secret in the in-camera statements cannot be disclosed in the order of detention. If the said details are disclosed,the very object of recording in-camera statements will be defeated. We are, therefore, of the view that the Apex Court in the case of Jagdev Singh Talwandi does not help the Petitioner.

29. Lastly it was submitted that the incidents reflected in C.R.No.155 of 2004 and in the in-camera statements are relating to individuals and they do not

affect the public order. In C.R.No.155 of 2004 the complainant has alleged that as a result of threats given by the Petitioner and his associates the complainant's workers ran away. Moreover due to the incident the shopkeepers pulled down shutters of their shops and the residents of the nearby houses closed their doors. In both the in-camera statements, it is stated that as a result of the incidents involving the Petitioner, people in the locality were scared and they ran helter-skelter. The complaint and the in-camera statements show that the prejudicial activities of the Petitioner and his associates created terror in the minds of the residents of the locality and the said activities disturbed the even tempo of life.

30. The learned Senior Counsel appearing for the Petitioner Shri Chitnis has relied upon the decision of the Apex Court reported in 1999 Supreme Court Case (Cri) 1014 (Amanulla Khan Alla Khan Pathan Vs. State of Gujarat and others) and 1995 Supreme Court Cases (Cri) 454 (Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta, Commissioner of Police and others) and contended that unless detenu is habitual offender, he cannot be termed as "Dangerours person". He submitted that a single isolated incident for which criminal case was registered against him would not be sufficient to brand him as a

dangerous person. He relied upon certain observations in both the Judgments. In support of his submission he contended that activities complained of amounted only to disturbance of law and order.

31. In both the Judgments the Apex Court was considering the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. Section 2(c) of the said Act defines the dangerous person. Perusal of the definition of dangerous person under said Act of 1985 shows that the same is in pari-materia with Section 2 (b-1) of the said Act of 1981. The ratio of both the Judgments is that in order to bring the person within the expression "Dangerous Person" there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI and XVII of I.P.C. In the case in our hands, in the complaint on the basis of which C.R. was registered and in the in-camera statements, activities of the Petitioner have been described. He has been moving in the localities with weapons in the company of his associates and threatening businessmen and shopkeepers in the area for extorting Hafta from them. The material on the basis of which subjective satisfaction has been recorded by the detaining

authority shows that the Petitioner is habitually committing or attempting to commit the offences which are referred to in the definition of "Dangerous Person". This is not a case where the order of detention is based on an isolated incident of commission of offence.

32. The aforesaid decisions of the Apex Court are relied upon by Shri Chitnis by contending that the prejudicial activities alleged against the Petitioner do not affect the public order. The Apex Court in case of Mustakmiya (supra) in paragraph No.9 held that :

> "... A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public

> order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality..."

The Apex Court in the decision of Amanulla Khan (supra) in paragraph No.5 held that,

> "...We are unable to appreciate this

> contention of the learned counsel for the detenu inasmuch as even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or not..."

In fact in the decision of Amanulla (supra), earlier Judgment of the Apex Court in case of Mustakmiya (supra) has been quoted with approval. As held by the Apex Court, even the activities violating ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of the life of the society at large or the life of a section of society determines whether the activities can be said to be prejudicial to public order or not. In the present case, due to prejudicial activities of the Petitioner and his associates, atmosphere of terror has been created in several localities named in the order of detention. It is alleged that the Petitioner and his associates are

engaged in extorting money in the name of Hafta from shopkeepers and small entrepreneurs. The Petitioner has unleashed a reign of terror in the localities. The said activities obviously affect the even tempo of life of the section of the society in the localities in which the Petitioner and his associates are carrying out their prejudicial activities. Therefore, the alleged activities of the Petitioner and his associates are within the ambit of expression of public order.

33. After considering the material before the detaining authority, subjective satisfaction has been recorded by the detaining authority. While exercising the power under Article 226 of the Constitution of India, we cannot examine the materials before the detaining authority and record a finding that the detaining authority could not have been satisfied on the material before it.

34. There is no merit in the petition and the same is rejected. Rule is discharged.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)